

**TESTIMONY OF GARY B. O'CONNOR
BEFORE THE COMMERCE COMMITTEE
OF THE GENERAL ASSEMBLY**

FEBRUARY 28, 2008

IN SUPPORT OF R.B. 5586 and R.B. 5589

Good afternoon. My name is Gary O'Connor. I am a partner at the law firm of Pepe & Hazard, LLP and I have had the wonderful opportunity of serving as one of the Co-Chairs of the General Assembly's Brownfields Task Force. I would like to thank the Commerce Committee for the opportunity to speak today in support of R.B. 5586 and R.B. 5589. These two Bills incorporate many of the recommendations made by the Task Force in its 2007 report to the General Assembly and serve as placeholders for the recommendations of the Task's Force 2008 Report, which has been submitted to your Committee this morning. We look forward to working with the Commerce Committee to amend these proposed bills to incorporate some of the priority items contained in the 2008 Report.

Since you will be hearing from some of my other colleagues regarding other aspects of the legislation, I will confine my remarks to two issues: organization reforms and municipal access to brownfields.

Last year, progress has been made to institute the organizational reforms recommended by the Task Force. The Office of Brownfields Remediation and Development, created by the General Assembly in 2006, has begun to take form. The OBRD is an operating office located within DECD. The State has initiated a nationwide search for a director to head the OBRD. Significantly, this director will report directly to the Commissioner of DECD.

In December 2007 a Memorandum of Understanding (“MOU”) was entered into among “partner agencies” responsible for Brownfield redevelopment in Connecticut including DECD, DEP, DPH and CDA. The purpose of the MOU is to (i) delineate each partner agency’s responsibilities with respect to the OBRD, (ii) foster cooperation among such agencies to create a process for the remediation and redevelopment of brownfields on an expedited basis and (iii) promote the OBRD as the institutional focal point to address brownfields issues in the State of Connecticut.

Although some progress has been made, there have been major setbacks, the biggest being the State’s lack of funding for additional staffing at the OBRD and its partner agencies, DECD and DEP. These agencies are blessed with talented and dedicated personnel, but they are already understaffed.

For instance, the average caseload of a DEP remediation division analyst is approximately 150 cases-triple an optimum caseload. This caseload prevents staff from working on and processing brownfield sites as quickly as they should. Likewise, DECD needs more program managers, planners, fiscal analysts and educators but has not been able to hire these important staff members because of delays in the reclassification of staff positions. There is currently only one full-time staff member in the OBRD. The brownfield pilot program established by the Legislature in 2006 has not been implemented as of the date of this report. More importantly, this lack of funding for appropriate staffing has sent a bad message to stakeholders in the brownfield community regarding the State’s commitment to remediate and redevelop

Connecticut's brownfields. The Task Force hopes that the State will correct this problem by enacting an amended version of R.B. No. 5586.

The additional funding in the range of \$3 million should be used for the following purposes:

- a. DEP. Hire and/or assign new personnel dedicated solely to brownfield issues. The Task Force recommends the creation of a separate brownfield section, headed by a supervisor and supported by at least four staff members at the Environmental Analyst 3 level. Additional funding, adjusted annually, must be appropriated by the Legislature to hire these new employees.
- b. DECD. Enable the DECD Commissioner to reclassify existing positions in her department so that she can hire more program managers, fiscal analysts, planners, project managers and program educators dedicated to brownfield issues. The Department of Administrative Services ("DAS") should make the reclassification a priority.
- c. OBRD. The Director of OBRD should be selected without delay. Once selected, the appropriate support team including program managers, at least one planner, one environmental analyst and one educator/marketer should be hired.

The other important issue which I would like to address is access to brownfields by municipalities. A major obstacle to the redevelopment of these brownfield properties is a lack of understanding regarding the type and extent of contamination within these properties. Municipal decision-makers and potential developers are reluctant to acquire these brownfield properties without a thorough understanding of their environmental condition because the financial and

liability uncertainties create an unacceptable level of risk. As a result, these brownfield sites remain neglected as municipal leaders and potential developers pursue other properties with less risk.

Often times, an environmental investigation clarifies the risk and removes the uncertainty, which, in turn, allow municipalities and developers to make informed decisions to acquire a site.

Without access to sites for environmental investigation, many brownfields will remain neglected. To address this issue, the Task Force recommends that Section 22a-133dd be expanded to allow municipalities and their LEP designees greater access to sites for the purpose of performing environmental assessments and investigation. And, if the municipality performs such investigations, it shall be permitted to do so without the concern that liability for the contamination will attach. R.B. No. 5589 provides the vehicle for making this revision.

The Task Force recommends that any licensed environmental professional retained by a municipality be permitted to access certain real properties for the purpose of conducting an investigation and without the municipality incurring any liability for the work or the contamination encountered for the following additional reasons: (i) the municipality's legislative body finds that such investigation is in the public interest of determining if the property should be included in any undertaking of development, redevelopment or remediation under Chapters 130, 132, 445 or 5881 of the General Statutes; and (ii) any official of the municipality reasonably finds such investigation necessary to determining if such property presents a risk to the safety, health, or welfare of the public, or a risk to the environment.

On behalf of the members of the Brownfields Task Force I would like to congratulate the Commerce Committee on its commitment to brownfield revitalization. Raised Bills 5586 and 5589 with the necessary amendments, are vitally necessary to provide for a meaningful State Brownfield program. Let's send a strong message that the State is committed to brownfield remediation and redevelopment. I urge you and the other members of the General Assembly to pass amended versions of Raised Bills 5586 and 5589.

Thank you.